

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File No: EB-09-HU-0051
)	
Raymond Frank)	NAL/Acct. No. 200932540003
)	
Austin, Texas)	FRN 0019027234
)	
)	

FORFEITURE ORDER

Adopted: November 5, 2009

Released: November 9, 2009

By the Regional Director, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of ten thousand dollars (\$10,000) to Raymond Frank for willful and repeated violation of Section 301 of the Communications Act of 1934, as amended (“*Act*”).¹ The noted violations involve Mr. Frank’s operation of an unlicensed radio transmitter on the frequency 90.1 MHz in Austin, Texas.

II. BACKGROUND

2. On January 23, 2007, in response to a complaint about an unlicensed radio station in the Austin, Texas area, agents from the Commission’s Dallas Office of the Enforcement Bureau (“*Dallas Office*”) confirmed by direction finding techniques that signals on the frequency 100.1 MHz were emanating from Mr. Frank’s residence in Austin, Texas.

3. On February 22, 2007, the Dallas Office issued a Notice of Unlicensed Operation to Mr. Frank warning him that the radio transmissions on 100.1 MHz from his residence were not authorized by the Commission and outlining possible penalties for continued unlicensed operation. On March 5, 2007, the Dallas Office received a reply from Mr. Frank stating the transmissions had ceased.

4. On July 22, 2009, in response to a complaint about an unlicensed radio station in the Austin, Texas area, agents from the Commission’s Houston Office of the Enforcement Bureau (“*Houston Office*”) confirmed by direction finding techniques that signals on the frequency 90.1 MHz were emanating from Mr. Frank’s residence in Austin, Texas. The agents took field strength measurements of the signals and determined the signals exceeded the limits for operation under Part 15 of Commission’s Rules (“*Rules*”)² and therefore, required a license. A search of the Commission’s databases found no evidence of a Commission authorization for operation on 90.1 MHz at this location in Austin, Texas.

¹ 47 U.S.C. § 301.

² Section 15.239 of the Rules provides that non-licensed broadcasting in the 88-108 MHz band is permitted only if the field strength of the transmission does not exceed 250 µV/m at three meters. 47 C.F.R. §15.239. On July 22, 2009, field strength measurements indicated that the signals were 13,048 times greater than the maximum permissible level for a non-licensed Part 15 transmitter.

5. On August 3, 2009, agents from the Commission's Houston Office of the Enforcement Bureau again confirmed by direction finding techniques that signals on the frequency 90.1 MHz were emanating from Mr. Frank's residence in Austin, Texas. The agents took field strength measurements of the signals and determined the signals exceeded the limits for operation under Part 15 of the Rules³ and therefore, required a license. A search of the Commission's databases found no evidence of a Commission authorization for operation on 90.1 MHz at this location in Austin, Texas.

6. On August 13, 2009, the Houston Office issued a *Notice of Apparent Liability for Forfeiture* to Mr. Frank in the amount of ten thousand dollars (\$10,000), for the apparent willful and repeated violation of Section 301 of the Act.⁴ Mr. Frank submitted responses to the *NAL* denying that the Commission has jurisdiction over this matter and requesting that the matter be dropped.

III. DISCUSSION

7. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,⁵ Section 1.80 of the Rules,⁶ and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), recon. denied, 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*"). In examining Mr. Frank's response, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁷

8. Section 301 of the Act⁸ states that no person shall use or operate any apparatus for the transmission of energy or communications or signals by radio within the United States except under and in accordance with the Act and with a license granted under the provisions of the Act. On July 22 and August 3, 2009, agents from the Houston Office determined that an unlicensed radio station on 90.1 MHz operated from Mr. Frank's residence. Mr. Frank was aware that such action violated the Act, as he received a Notice of Unlicensed Operation on February 22, 2007 for operating an unlicensed radio station from his residence. In his response to the *NAL*, Mr. Frank did not deny any of these facts. Mr. Frank also stated that he "has ceased all transmissions and has no plans to transmit in the future." Thus, based on the evidence before us, we find that Mr. Frank willfully⁹ and repeatedly¹⁰ violated Section 301 of the Act by operating radio

³ On August 3, 2009, field strength measurements indicated that the signals were 15,434 times greater than the maximum permissible level for a non-licensed Part 15 transmitter.

⁴ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200932540003 (Enf. Bur., Houston Office, August 13, 2009) ("*NAL*").

⁵ 47 U.S.C. § 503(b).

⁶ 47 C.F.R. § 1.80.

⁷ 47 U.S.C. § 503(b)(2)(E).

⁸ 47 U.S.C. § 301.

⁹ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act...." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

¹⁰ As provided by 47 U.S.C. § 312(f)(2), a continuous violation is "repeated" if it continues for more than one day. The *Conference Report* for Section 312(f)(2) indicates that Congress intended to apply this definition to Section 503 of the Act as well as Section 312. See H.R. Rep. 97th Cong. 2d Sess. 51 (1982). See *Southern California Broadcasting Company*, 6 FCC Rcd 4387, 4388 (1991) and *Western Wireless Corporation*, 18 FCC Rcd 10319 at fn. 56 (2003).

transmission apparatus without a license on July 22, 2009 and August 3, 2009.

9. In his response to the *NAL*, Mr. Frank asserts that, as a citizen of the Republic of Texas, he is not subject to the laws of the United States or the Commission's Rules. Specifically, Mr. Frank asserts that the Commission lacks jurisdiction over his actions, because he operated a radio station solely within the boundaries of the state of Texas. Finally, Mr. Frank justifies violating Section 301 of the Act, because he claims the Commission's licensing policies violate the First Amendment.

10. Section 301 of the Act explicitly sets forth the Commission's jurisdiction over all radio transmissions, both interstate and intrastate.¹¹ Section 301 of the Act states that no person shall use or operate any apparatus for the transmission of energy or communications or signals by radio "from one place in any State, Territory, or possession of the United States or in the District of Columbia to another place in the same State, Territory, possession, or District," or from one place within a State to another State without a license.¹² Thus, contrary to Mr. Frank's assertion, the Commission does not lack jurisdiction over the use of radio transmitting equipment within the State of Texas.¹³ Moreover, the U.S. Supreme Court has repeatedly held that there is no constitutional right to use radio facilities without a license.¹⁴ Issuing a forfeiture for operating a radio station without a license simply represents the enforcement of the Act, not some abridgement of Mr. Frank's Constitutional rights.

11. We have examined Mr. Frank's response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement*. As a result of our review, we find no basis for cancellation or reduction of the \$10,000 forfeiture proposed for this violation.

IV. ORDERING CLAUSES

12. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission's Rules, Raymond Frank **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of ten thousand dollars (\$10,000) for violations of Section 301 of the Act.¹⁵

13. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this Order. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹⁶ Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the *NAL*/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to

¹¹ See *Joseph Frank Ptak*, Decision, 14 FCC Rcd 9317, 9320, para. 13 (1999). See also *U.S. v. Butterfield*, 91 F.Supp.2d 704 (D.VT 2000).

¹² 47 U.S.C. § 301.

¹³ We also note that Texas is a "State" of the United States of America, and it and its residents are subject to the laws of the United States. According to the Texas Historical Commission, Texas was annexed to the United States as the 28th state on December 29, 1845; Texas seceded from the United States and joined the Confederate States of America on January 28, 1861; and Texas officially was readmitted to the Union on March 30, 1870, following the period of Reconstruction. See <http://www.thc.state.tx.us/triviafun/trvgov.shtml>. Because Texas is a State, Mr. Frank's invocation of the Foreign Sovereign Immunities Act is misplaced.

¹⁴ See *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367, 388 (1969); *National Broadcasting Co. v. U.S.*, 319 U.S. 190, 227 (1943).

¹⁵ 47 U.S.C. §§ 301, 503(b); 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

¹⁶ 47 U.S.C. § 504(a).

U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures. Mr. Frank will also send electronic notification on the date said payment is made to SCR-Response@fcc.gov.

14. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to Raymond Frank at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

Dennis P. Carlton
Regional Director, South Central Region
Enforcement Bureau